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THE DECISION OF BRISTOL *v.* MIDLAND RAILWAY COMPANY, AND THE TRUE NATURE OF A BAILOR'S INTEREST. — We are indebted to R. C. McMurtrie, Esq., for the following criticism on a note in the last issue of the REVIEW: —

"The criticism on *Bristol* v. *Midland* (1891), 2 Q. B. 653, seems to have overlooked the real ground of the decision. It is true it does seem to decide that trover will lie for a conversion before title accrued to the plaintiff. The criticism seems to assume that the decision is that one can sue for an injury that occurred before he became owner. This is apparently impossible; and the ground on which the case rests and is rested has, I think, been overlooked. It lies in the fact that the title of the owner had not been divested by the delivery or the so-called conversion; he might sue the person who delivered or the person who received the goods. The title remaining, notwithstanding the wrongful delivery, passed by the delivery of the bill of lading, and the bailee could not dispute the plaintiff's right or his duty to deliver when called on, or set up his wrongful conversion as destroying that title. I think this is the real ground, because in the case relied on, 2 Best & Sm. 1, Wightman, J., admits that if the deeds had been *burned* before the title passed, the devisee could not sue. The wrongful delivery was evidence of conversion, but left the title unaffected, and did not convert that into a right to sue. Any subsequent owner could demand, and the refusal was evidence of a conversion at that time; and the bailee could not avoid that by showing he had already parted with the possession. This ruling is essential to justice; for the former holder, who might have sued for the wrongful delivery, having given up the bill of lading, had parted with the title, and had no interest that was impaired while he held it (he had been paid for his debt); while the holder of the title, who had paid for the property, could not sue for the act done before he bought, if that had put an end to the thing. so that nothing passed by the sale. But he could sue for not delivering property he was bound to keep and deliver to the holder of the bill of lading.

"The essence of the whole thing lies in the distinction between what is evidence of conversion, and a conversion that puts an end to ownership and converts that into a right of action."

The justice of this criticism must depend upon the true nature of a bailor's interest. All will agree that the bailor has not possession, but that he has a conditional right of possession, — that is, a right of action. In the opinion of our distinguished critic, the bailor has, so long as the chattel bailed is *in rerum natura*, something more than this right of action, — namely, the title. Here, with all deference, we must take issue. We are of Blackstone's opinion (2 Com. 453) that "the bailor hath nothing left in him but the right to a *chose in action*." We think any one who claims more than this for the bailor will have to exercise all his ingenuity to define the additional interest. We may refer for a fuller expression of our views to Vol. III. of the REVIEW, pages 314, 342, *n.* 1, 343–346.[1] An additional test of the accuracy of our position is furnished by the case of *Jones* v. *Hodgkins*, 61 Me. 480. The defendant was a bailee, with instructions to sell in behalf of the owner. The owner, without notice to the bailee, sold the goods himself to the plaintiff. The defendant subsequently, and without knowledge of this sale, sold the goods to another. The plaintiff sought to charge the defendant for a conversion. Three judges were in favor of the action, because by the sale of the bailor the title passed to the plaintiff, and the defendant, however innocent, had in fact sold the plantiff's goods without any authority from him. The majority of the court were against the action. The reasoning is not altogether satisfactory; but the decision seems clearly right. The bailor's interest was simply a *chose in action* against the defendant. He had a right to have his goods back, unless they were sold before a countermand of the instruction to sell; and in that event he would be entitled to what the bailee had received for them. This right, and this right only, passed to the plaintiff. As the goods were sold before countermand, the plaintiff was not entitled to have the goods, and therefore could not maintain trover.

In *Bristol Bank* v. *Midland Company*, the bailee having converted the goods, the bailor had at the time of the sale to the plaintiff a choice of claims against the defendant. He might sue for the conversion, or he might demand his goods, and on refusal bring an action for the breach of the contract of bailment. This choice of rights passed by the sale to the plaintiff. The plaintiff made the demand and recovered. On principle and by the earlier decisions, the plaintiff should have enforced his rights in the name of the bailor. But in *Franklin* v. *Neate*, 13 M. & W. 481, the court, by judicial legislation, made it possible for the assignee of a bailor to sue in his own name.

JURISDICTION OF THE FEDERAL COURTS OVER QUESTIONS ARISING UNDER STATE LAWS. — The opinion of the Supreme Court in *Boyd* v. *Nebraska*, 12 Sup. Ct. Rep. 380, is a warning to the States that they may suddenly find that, through incautious legislation on their part, they have lost their freedom from vexatious Federal control. Ordinarily the choice of its governor is a matter which concerns the State alone. It may choose a non-resident Hottentot, if it desires, and the Federal Government cares not a whit. The Constitution of the United States is a constitution *for* the United States, and not for each State, except in certain limited particulars. Consequently, it does not prescribe rules for the

[1] Page 344, line 3, "valid" should be "invalid," and page 346, line 2, "vendee," should read "vendor."